IN THE SUPERIOR COURT

OF THE STATE OF DELAWARE

JERZY WIRTH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N14C-10-028 WCC CCLD
	)	
T&H BAIL BONDS, INC. and VIRGINIA S. PRIDGEN,	)	
	)	
	)	
Defendants.	)	

Submitted: April 26, 2016
Decided: September 1, 2016

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After years of contentious and often unproductive litigation, the Court held a bench trial in the above-captioned matter on January 19th and 20th, 2016. Mr. Jerzy Wirth ("Plaintiff") acted *pro se* but had the assistance of Mr. Floyd White, ("Mr. White") who had a financial interest in the litigation. While somewhat unusual, the Court allowed Mr. White to ask questions of the witnesses, without an objection by the defense, which aided in the presentation of Plaintiff's case. Mrs. Virginia Pridgen ("Defendant") was represented by James Green, Esquire. The case was also originally filed against T&H Bail Bonds, Inc. ("T&H"), but the

corporation did not answer the Complaint and a default judgment was entered against it on December 10, 2014. Defendant's husband, Mr. Ted Pridgen, who has been the principal owner of T&H for most of its existence, filed for bankruptcy and thus was not named as a party. It is clear from the testimony and documents presented at trial, however, that Plaintiff's arrangement with T&H and their partnership in the cash bond business was a result of Plaintiff's interactions with Mr. Pridgen. Plaintiff operated his business under the name of Wirth Financial Services, LLC, which was primarily created to provide cash to bond companies to allow them to post bail in the various courts in Kent and New Castle Counties. Having considered the evidence and testimony introduced at trial, this is the Court's decision in the matter.

On November 29, 2010, Plaintiff, acting on behalf of Wirth Financial Services, LLC, entered into an agreement with Mr. Pridgen and T&H to provide cash to underwrite the cash bonds posted by T&H. The initial investment was $100,000.00, which gradually increased to $1,000,000.00 by September 2011. Two procedures were put in place to provide funding. First, T&H was provided working capital that could be utilized to write cash bails of nominal amounts. When the working capital balance was low, Plaintiff would issue a check to T&H

to replenish the fund. Second, if the cash bail amount was significant, T&H would bypass working capital and request the funds from Plaintiff directly. In exchange for this funding, Plaintiff received a premium of either 10% of the bail or half of the fee charged by T&H to post the bond, whichever amount was greater. So, for example, if T&H charged 20% to post a $10,000 bond, Plaintiff would receive a premium of $1,000. If, for the same amount of bail, T&H charged 25%, the premium would be $1,250. It appears from a review of the 418 bonds posted over the three year period that Plaintiff provided funding that the premiums generally fluctuated between 20 - 33%. Plaintiff was to be paid his premium amounts on the first and fifteenth of each month, and T&H was to deposit amounts owed into Plaintiff's checking account.

These transactions were accounted for with a spreadsheet maintained by T&H that would list the date the bond was posted, its amount, Plaintiff's premium amount, the name of the defendant, the Court in which the bail had been posted, and the percentage charged for posting the bond. Once a defendant's case was "adjudicated," the spreadsheet was supposed to reflect the amount which would be returned to T&H and then eventually to Plaintiff. Unfortunately, the achilles heel

of the parties' relationship was the lack of accountability in accurately maintaining the spreadsheet.

First, Plaintiff was totally dependent upon T&H to maintain and oversee the spreadsheet. While T&H staff was generally good about initially recording the bail, they were terrible at documenting when a case ended and the amount of bail that was returned from the Court. The failure to appropriately document this activity would give a false impression that the case was still active when, in fact, T&H had already received the funds. This led to T&H using the returned funds to pay payroll and other bills when it was short of operating funding. While it is shocking to the Court that Plaintiff failed to recognize that this conduct was occurring early on in the relationship, over time this led to Plaintiff providing funding of over $1.2 million which was not returned. Obviously neither party here was diligent in keeping accurate records, nor were they careful to avoid co-mingling of funds. In fact, it is the parties' failure to create a reliable procedure for accounting for the funds and for ensuring accounts remained separate that led to the dispute now before the Court. Plaintiff has obviously lost a significant amount of money, but his thirst for obtaining a substantial return on his investment clouded his judgment in providing T&H total and unfettered control of the

documentation of events relied upon by the parties. Nevertheless, the loss figure of $1,270,075.24 was not disputed at trial and that amount appears to be sufficiently documented to satisfy the Court's concern regarding its reliability. As such, the Court will award damages to the Plaintiff and against T&H Bail Bonds, Inc. in that amount.

The real issue at trial was the extent to which Mrs. Pridgen was personally liable for this amount. The Court first notes that Plaintiff's interaction with Mrs. Pridgen was sporadic, occurring only when funds were needed or when Plaintiff dropped off checks for T&H. There is no question the original agreement in November 2010, and every subsequent modification thereof, was executed between Ted Pridgen, T&H, and Wirth Financial Services, LLC. In addition, only Mr. Pridgen personally guaranteed the "loan" or agreement for funding.

T&H was incorporated in 1991 by Mr. Pridgen, and his wife was listed as Secretary. Sometime in 2013, Mrs. Pridgen became a 50% stockholder in T&H and subsequently obtained full ownership at or about the time her husband went into bankruptcy. So while it appears Mrs. Pridgen gained a significant investment interest in T&H during the time Plaintiff was in business with the company, there is no question Mr. Pridgen continued to maintain the account with Plaintiff. All

transactions were completed by the corporate entity or Mr. Pridgen personally. With one exception, discussed below, Mrs. Pridgen's relationship with Plaintiff was solely by virtue of her position as a T&H employee. The Court finds insufficient justification, based on these facts, for holding her personally responsible for conduct typically engaged in without her knowledge or consent.

The one exception to the above is a promissory note signed by Mrs. Pridgen, Mr. Pridgen, T&H, and Wirth Financial Services, LLC in September 2011. The amount borrowed was $115,322.93 and, according to the testimony, was to be used by T&H to cover outstanding debts, including costs related to litigation brought by the previous provider of cash for T&H's bonds. The note was personally guaranteed by both Mr. and Mrs. Pridgen and secured by two of their race horses. The note also reflected that it would be a joint and severable obligation of all parties. Since it appears the loan has not been repaid, Mrs. Pridgen is obligated to satisfy the full amount. It also appears that the amount from the promissory note was included in the litigation damages calculated by Plaintiff in this matter in the amount of $1,270,075.24. Therefore, the payment of that obligation would also satisfy the promissory note.

The Court can fairly determine from the evidence that the promissory note is in default. However, nothing was presented to the Court at trial indicating when exactly the default occurred. In addition, while the Court finds the note, prepared by Plaintiff, poorly drafted in regards to the consequences of default, it does appear interest would accrue at a rate of 3% upon default. Thus, the Court finds Mrs. Pridgen is liable for the promissory note and will enter judgment against her in the amount of $115,322.93 plus 3% interest to be calculated starting from the issuance of this decision.

In conclusion, the Court finds in favor of Plaintiff and against T&H in the amount of $1,270,075.24. In addition, it finds in favor of Plaintiff and against Mrs. Pridgen in the amount of $115,322.93. Interest is to be calculated as set forth above. Having made this decision, the Court again expresses its disappointment in the parties not resolving this matter. As indicated at the conclusion of trial, while the Court can understand Plaintiff's frustration, the only realistic opportunity for him to recover the funds lost in this venture was for T&H to continue conducting its business with some hope of generating the profits needed to repay the debt. Unfortunately, instead of cooperating with T&H, Plaintiff has taken action which has at times prevented T&H from operating as a viable business. This conduct was adverse to his interests and, frankly, irrational for an individual who claims T&H's conduct has caused such devastation to his livelihood. The Court

encouraged the parties to come to an agreement and, thus, delayed issuing this decision to provide them sufficient time to discuss alternative resolutions. Unfortunately, it appears no such resolution or agreement has been reached in the time allotted, leaving the decision to the Court. The Court suggests that the parties continue to discuss whether some agreement can be reached for a reasonable and structured repayment of this debt.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.